

DOUGLAS J. ROVENS (SBN 106582)
ROVENS LAMB LLP
drovens@rovenslamb.com
2601 Airport Drive, Suite 370
Torrance, California 90505
Telephone: (310) 536.7830
Facsimile: (310) 872.5026

JAMES P. BONNER – ADMITTED PRO HAC VICE
PATRICK L. ROCCO – ADMITTED PRO HAC VICE
SUSAN M. DAVIES – ADMITTED PRO HAC VICE
FLEISCHMAN BONNER & ROCCO LLP
81 Main Street, Suite 515
White Plains, New York 10601
Telephone: (908) 516.2066

Attorneys for Petitioners
EMMA JEAN ANDERSON, et al.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

EMMA JEAN ANDERSON, *et al.*,

Petitioners.

V.

ISLAMIC REPUBLIC OF IRAN and
NATIONAL IRANIAN OIL
CORPORATION,

Respondents.

Case No. 2:22-CV-2160 PA (ASx)

**PETITIONERS' POST HEARING
MEMORANDUM OF POINTS AND
AUTHORITIES RE: OAKTREE
CAPITAL MANAGEMENT LP'S
CONTROL OVER THE IRANIAN
OIL ABOARD ITS VESSEL THE
SUEZ RAJAN**

[Filed concurrently with Compendium of Transcript and Selected Exhibits from Nov. 17, 2022 Hearing Examination; Petitioners' Application to File Under Seal Pursuant to Local Rule 79-5.2.2(b)]

Judge: Hon. Alka Sagar
Courtroom: 540
Hearing Date: November 17, 2022

TABLE OF CONTENTS

2	INTRODUCTION	1
3	THE RELEVANT FACTS	4
4	A. Petitioners' Judgments Against Iran	4
5	B. Iran's Efforts to Evade U.S. Sanctions Applicable 6 to the Smuggled Oil Aboard the Tanker Suez Rajan	5
7	C. Oaktree and Its Control of the Suez Rajan.....	8
8	I. THE COURT HAS SUBJECT MATTER JURISDICTION 9 OVER THESE POST-JUDGMENT PROCEEDINGS	13
10	II. FEDERAL RULE OF CIVIL PROCEDURE 69 PERMITS 11 JUDGMENT CREDITORS TO RELY ON FEDERAL LAW 12 AND STATE (CALIFORNIA) LAW PROCEDURAL MECHANISMS 13 TO FACILITATE THEIR COLLECTION EFFORTS.....	14
14	III. THE COURT SHOULD EXERCISE ITS AMPLE 15 STATUTORY AND EQUITABLE POWERS TO FACILITATE 16 PETITIONERS' ABILITY TO EXECUTE THEIR DEFAULT 17 JUDGMENTS AGAINST THE SMUGGLED OIL	14
18	A. The Court May Exercise Its Full Array of Equitable 19 Powers in Connection with the Examination Hearing.....	14
20	B. TRIA and the FSIA Dictate that the Smuggled Oil 21 Enjoys No Immunity from Execution.....	15
22	C. At the Examination Hearing Petitioners Demonstrated 23 that They Satisfy All of TRIA's Requirements for 24 Executing Against the Proceeds of the Smuggled Oil.....	19
25	1. The Elements Petitioners Must Prove to Show Their 26 Entitlement to Collect the Smuggled Oil Under TRIA	19
27	2. Petitioners Hold Judgments Against Iran, a Terrorist Party	20
28	3. Petitioners' Judgments Arise from Claims for 29 Which Iran Has No Immunity from Liability	20
30	4. Petitioners' Uncollected Compensatory Damages 31 Far Exceed the Value of the Smuggled Oil	21

1	5. The Smuggled Oil is a Blocked Asset of NIOC, 2 Which Qualifies as an Agency or Instrumentality 3 of Iran Under TRIA.....	21
4	D. The Presence of the Smuggled Oil in International 5 Waters Does Not Prevent the Court from Ordering 6 Oaktree to Take the Steps Necessary to Facilitate Petitioners' Ability to Execute Against Those Assets	23
7	IV. CONCLUSION	28
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

1 **TABLE OF AUTHORITIES**

2 **Cases**

3 <i>Aequitas Enters., LLC v. Interstate Inv. Grp., LLC</i> 4 (Utah 2011) 267 P.3d 923.....	24
5 <i>Bennett v. Islamic Republic of Iran,</i> 6 (9th Cir. 2015) 817 F.3d 1131	20
7 <i>Branch v. Umphenour,</i> 8 (E.D. Cal. Jan 18, 2017) 2017 U.S. Dist. LEXIS 7032	26
9 <i>Brown v. Brown,</i> 10 (1971) 22 Cal. App. 3d 82	23
11 <i>Cisneros v. Alpine Ridge Grp.,</i> 12 (1993) 508 U.S. 10.....	17
13 <i>Commonwealth of the N. Mariana Islands v.</i> 14 <i>Candian Imperial Bank of Commerce</i> 15 (N.Y. 2013) 990 N.E.2d 114	17
16 <i>Estate of Hardwick v. Islamic Republic of Iran,</i> 17 (D.D.C. Oct. 1, 2021) 2021 U.S. Dist. LEXIS 252934.....	21
18 <i>Glob. Money Mgmt. v. McDonnold,</i> 19 (S.D. Cal. Oct. 15, 2009) 2009 U.S. Dist. LEXIS 96067.....	24
20 <i>Goodyear Atomic Corp. v. Miller,</i> 21 (1988) 486 U.S. 174.....	25
22 <i>Helmerich & Payne Int'l Drilling Co. v. Bolivarian Republic of Venez.</i> 23 (D.D.C. 2016) 185 F. Supp. 3d 233.....	19
24 <i>Groza-Vance v. Vance,</i> 25 (Ohio Ct. App. 2005) 834 N.E.2d 15	24
26 <i>Imperial Bank v. Pim Elec., Inc.,</i> 27 (1995) 33 Cal. App. 4th 540	14
28 <i>JW Oilfield Equip., LLC v. Commerzbank AG,</i> 29 (S.D.N.Y. 2011) 764 F. Supp. 2d 587	24
30 <i>Koehler v. Bank of Bermuda Ltd.,</i> 31 (N.Y. 2009) 883 N.Y.S.2d 763	24, 25
32 <i>Levin v. Bank of N.Y.,</i> 33 (S.D.N.Y. Jan. 28, 2011) 2011 U.S. Dist. LEXIS 8946	16

1	<i>Levin v. Bank of N.Y.</i> , (S.D.N.Y. Oct. 3, 2019) 2019 U.S. Dist. LEXIS 237101.....	25
2	<i>Miller v. Doniger</i> , (N.Y. App. Div. 2006) 814 N.Y.S.2d 141.....	25, 26
3	<i>Peacock v. Thomas</i> , (1996) 516 U.S. 349.....	14
4	<i>Peterson v. Islamic Republic of Iran</i> , (9th Cir. 2010) 627 F.3d 1117	13
5	<i>Ramirez v Manpower, Inc.</i> (N.D. Cal. July 10, 2014) 2014 U.S. Dist. LEXIS 94362	26
6	<i>Republic of Arg. v. NML Capital, Ltd.</i> , (2014) 573 U.S. 134.....	15
7	<i>Rubin v. Islamic Republic of Iran</i> , (D. Mass. Sept. 30, 2006) 2006 U.S. Dist. LEXIS 73383.....	13
8	<i>Samantar v. Yousuf</i> , (2010) 560 U.S. 305.....	15
9	<i>Stansell v. Revolutionary Armed Forces of Colombia</i> , (11th Cir. 2014) 771 F.3d 713	16
10	<i>Taylor v. Taylor</i> , (1923) 192 Cal. 71	23
11	<i>UMG Recordings, Inc. v. BCD Music Grp., Inc.</i> , (C.D. Cal. Jul. 9, 2009) 2009 U.S. Dist. LEXIS 97017	24, 25
12	<i>United States v. Int'l Union of Petrol. & Indus. Workers</i> (9th Cir. 1989) 870 F.2d 1450	18
13	<i>Weininger v. Castro</i> , (S.D.N.Y. 2006) 462 F. Supp. 2d 457	19
14	Statutes	
15	Cal. Civ. Proc. Code § 708.120	14, 15, 18
16	Cal. Civ. Proc. Code § 708.205	14, 15, 18
17	Cal. Civ. Proc. Code § 708.620	15
18	N.Y. CPLR § 5225(b).....	17, 18
19	Export Administration Act of 1979, 50 U.S.C. § 4604.....	18, 20
20		
21		
22		
23		
24		
25		
26		
27		
28		

1	Foreign Assistance Act of 1961 § 620A 22 U.S.C. § 2371.....	20
3	Foreign Sovereign Immunities Act, 28 U.S.C. § 1602 <i>et seq.</i>	<i>passim</i>
4	International Emergency Economic Powers Act, 50 U.S.C. §§ 1701, 1702	21
6	Terrorism Risk Insurance Act of 2002 (“TRIA”) § 201(a), 28 U.S.C. § 1610 (note)	<i>passim</i>
7	Trading with the Enemy Act, § 5(b), 50 U.S.C. § 4305(b).....	21
9	28 U.S.C. § 1603(b).....	21
10	28 U.S.C. § 1605(a)(3)	19
11	28 U.S.C. § 1605(a)(7)	16, 19, 20
12	28 U.S.C. § 1605A.....	16, 20,
13	28 U.S.C. § 1608.....	5
14	28 U.S.C. § 1609.....	15, 16
15	28 U.S.C. § 1610.....	15, 16
16	28 U.S.C. § 1611.....	15
17	28 U.S.C. § 1963.....	5, 13
18	Rules	
19	31 C.F.R. § 501.603(a)(2).....	25
20	Fed. R. Civ. P. 34.....	18
21	Fed. R. Civ. P. 69.....	1, 13, 14
22	Fed. R. Evid. 602	26
23	Fed. R. Evid. 801(c).....	26
24	Other Authorities	
25	Alan M. Ahart, <i>California Practice Guide: Enforcing Judgments & Debts</i> , Ch. 6J-3 (2021 Update)	23, 24
26	Alan M. Ahart, <i>California Practice Guide: Enforcing Judgments & Debts</i> (The Rutter Group 1994)	15
28	Executive Order 13224	

1	66 Fed. Reg. 49079 (Sept. 25, 2001).....	25
2	Executive Order 13599	
3	77 Fed. Reg. 6657 (Feb. 5, 2012)	21, 22
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

1 **INTRODUCTION**

2 Petitioners are victims of terrorist attacks sponsored by the Islamic Republic
3 of Iran (“Iran”). The majority of Petitioners are victims of the 1983 terrorist
4 bombing of the U.S. Marine Barracks in Beirut, Lebanon that was carried out by
5 Iran’s proxy, the terrorist organization Hezbollah. That attack, which involved
6 what was until then the largest non-nuclear weapon explosion in the Earth’s
7 history, killed 241 American servicemen and injured many others. Petitioners also
8 include personal representatives and family members of: (a) a 14-year-old boy
9 killed in a 1997 Iranian-sponsored terrorist bombing in Israel; (b) two American
10 soldiers who were kidnapped and murdered by Iranian-sponsored terrorists in Iraq;
11 and (c) a 15-year-old girl killed in the infamous 2001 Sbarro Restaurant bombing
12 in Jerusalem perpetrated by the Iranian-backed Hamas terrorist organization.
13 Collectively, Petitioners hold billions of dollars of uncollected default judgments
14 (the “Default Judgments”) against Iran for compensatory damages.

15 With limited success, Petitioners have diligently sought for decades to
16 collect those judgments. Iran, however, is well-practiced in the art of evading
17 judgments.

18 In this proceeding, Petitioners rely on Section 201 of the Terrorism Risk
19 Insurance Act of 2002 (“TRIA”) and judgment enforcement procedures available
20 under California law (as Fed. R. Civ. P. 69 contemplates) to collect the proceeds
21 of the sale of certain crude oil owned by the National Iranian Oil Corporation
22 (“NIOC”). NIOC is wholly owned by Iran. That oil (the “Smuggled Oil”) is
23 currently located on the Marshall Islands-flagged crude oil tanker Suez Rajan, a
24 vessel controlled by Oaktree Capital Management, LP (“Oaktree”), an investment
25 firm headquartered in this District. NIOC attempted to secretly load the Smuggled
26 Oil aboard the Suez Rajan and ship it to Chinese buyers in an effort to evade the
27 sanctions that the U.S. government has imposed on Iran as a result of its nuclear
28

1 proliferation efforts and longtime sponsorship of terrorist attacks against
2 American citizens.

3 Because of the persistent and successful judgment evasion efforts of U.S.
4 government-designated state sponsors of terrorism, particularly Iran, Congress
5 enacted TRIA. That statute dictates that the agencies and instrumentalities of
6 terrorist states, like NIOC, bear full liability for terrorism-related judgments
7 entered against their sovereigns. Thus, the fact that the Smuggled Oil belongs to
8 NIOC, not Iran, poses no obstacle to Petitioners' efforts to use that oil to satisfy
9 their Default Judgments.

10 The presence of the Smuggled Oil in international waters also does not
11 deprive the Court of the power to order Oaktree to take the steps necessary to
12 facilitate Petitioners' ability to execute their judgments against that cargo. Well-
13 established precedent dictates that courts may order third parties subject to the
14 courts' jurisdiction to take steps necessary to facilitate the collection of judgment
15 debtors' assets that are controlled by third parties, even when the assets are located
16 in foreign states or countries. For example, courts have exercised their broad
17 equitable powers to facilitate judgment collection by ordering third parties to bring
18 assets over which they have control into the jurisdiction, requiring third parties to
19 assign their rights in foreign assets to judgment creditors, and appointing receivers
20 to sell judgment debtor assets located in other jurisdictions. Thus, the Court may
21 exercise all of those powers—and more—to facilitate the collection of Petitioners'
22 Default Judgments.

23 As the initial step in these judgment enforcement proceedings, the Court
24 granted Petitioners the right to conduct a two-hour examination of Oaktree at a
25 hearing on November 17, 2022 (the "Examination Hearing"). The Court limited
26
27
28

1 that hearing solely to the issue of “whether Oaktree has possession or control of
2 the crude oil on the Suez Rajan.” Tr. at 6.¹

3 As shown below, evidence introduced at the Examination Hearing
4 demonstrates that Oaktree is the ultimate owner of the Suez Rajan through a series
5 of affiliated foreign shell companies. Moreover, under the Bareboat Charter
6 Agreement governing the Suez Rajan, Oaktree has the right and ability to re-take
7 possession of the vessel and its cargo.

8 Although the Court has yet to grant Petitioner a hearing or discovery on the
9 separate issue of whether Iran’s NIOC owns the Smuggled Oil aboard the Suez
10 Rajan, a wealth of circumstantial evidence demonstrates that no credible question
11 exists regarding that fact. Indeed, since Oaktree’s connection to the Smuggled Oil
12 was first revealed publicly in February 2022, the Suez Rajan has merely idled in
13 international waters for more than nine months, rather than proceeding to her
14 Chinese destination. That unusual conduct confirms that the Smuggled Oil
15 belongs to NIOC. Otherwise, the owner of that \$100 million cargo would have
16 stepped forward in the past nine months to claim its property.

17 Moreover, the Bareboat Charter Agreement that Oaktree originally cited as
18 evidence that it cannot control the Suez Rajan actually compels the opposite
19 conclusion. The Bareboat Charter entitles Oaktree to reclaim the Suez Rajan if the
20 charterer, Suez Rajan, Limited, an affiliate of Empire Navigation Inc. (“Empire
21 Navigation”) allows the vessel to be used in a manner that violates U.S. sanctions
22 against Iran. All parties, [REDACTED] agree that Empire Navigation
23 has violated those terms of the Bareboat Charter. [REDACTED]
24 [REDACTED]
25
26

27 ¹ Citations to “Tr. at __” refer to specific pages of the Transcript of the November 17, 2022
28 Examination Hearing which is attached at Tab 1 of the Compendium of Transcript and Selected
Exhibits from November 17, 2022 Examination Hearing (“Compendium”).

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED] Oaktree [REDACTED] believes Empire
10 Navigation has violated the Bareboat Charter's sanctions provisions and that those
11 violations entitle Oaktree to reclaim the Suez Rajan.
12 Thus, Petitioners have established all of the facts that entitle them to an
13 order requiring Oaktree to take the steps necessary to facilitate Petitioners' ability
14 to collect the Smuggled Oil. Specifically, Oaktree has the ability to control the
15 Smuggled Oil, an asset of an Iranian agency subject to collection under TRIA.
16 The Court should therefore order Oaktree to commence the steps necessary to
17 reclaim the Suez Rajan and to bring its Iranian-owned cargo to U.S. waters.

18 **The Relevant Facts**

19 **A. Petitioners' Judgments Against Iran**

20 As noted above, most Petitioners are American military service members
21 injured in the infamous 1983 Iranian-sponsored attack upon the Marine Barracks
22 in Beirut, Lebanon, the personal representatives of service members killed in the
23 attack, and family members of those individuals. *See* May 13, 2022 Declaration
24 of James P. Bonner [Dkt. 22-4] ("Bonner Decl.") at ¶ 3. Petitioners also include
25 personal representatives and family members of: (a) a 14-year-old boy killed in a
26 1997 Iranian-sponsored terrorist bombing in Israel; (b) two American soldiers who
27 were kidnapped and murdered by Iranian-sponsored terrorists in Iraq; and (c) a 15-

1 year-old girl killed in the 2001 Sbarro Restaurant bombing in Jerusalem
2 perpetrated by the Iranian-backed Hamas terrorist organization. *Id.* Petitioners'
3 unsatisfied Default Judgments against Iran total more than \$4.9 billion, including
4 post-judgment interest. *Id.* at ¶ 4.

5 Petitioners' Default Judgments arose from claims asserted pursuant to the
6 statutory exceptions to sovereign immunity that are applicable to terrorism-related
7 claims under the Foreign Sovereign Immunities Act ("FSIA"), 28 U.S.C. § 1602 *et*
8 *seq.* Bonner Decl. at ¶¶ 5-6. Those Default Judgments were issued in 16 separate
9 actions by the U.S. District Court for the District of Columbia. *Id.* at ¶ 6.

10 Consistent with 28 U.S.C. § 1963, Petitioners have registered their
11 judgments in this District. *Id.* at ¶ 7. In cases involving judgments entered against
12 foreign sovereigns pursuant to the FSIA, judgment creditors must serve the
13 sovereign with notice of default judgments in the manner that 28 U.S.C. § 1608(a)
14 prescribes. *See* 28 U.S.C. § 1608(e). Petitioners completed that step years ago.
15 Bonner Decl. at ¶ 8.

16 **B. Iran's Efforts to Evade U.S. Sanctions Applicable
17 to the Smuggled Oil Aboard the Tanker Suez Rajan**

18 Petitioners seek to satisfy a small portion of their Default Judgments with the
19 proceeds of the sale of approximately 1,000,000 barrels of Iranian-owned crude oil
20 aboard the Marshall Islands-flagged tanker Suez Rajan. Bonner Decl. at ¶ 9;
21 5/13/2022 Declaration of David Adesnik [Dkt. 16-2] ("Adesnik Decl.") at ¶ 22;
22 Tr. at 95-96. Petitioners have already demonstrated through their expert's
23 declaration and related evidence that NIOC owns the Smuggled Oil. Adesnik Decl.
24 at ¶¶ 7-22; Bonner Decl. at ¶¶ 9-10. Although the Examination Hearing was
25 limited to the issue of Oaktree's control, Petitioners nonetheless elicited additional
26 evidence that leaves no doubt that the Smuggled Oil belongs to Iran, as noted in the
27 transcript citations below.

1 The Iranian government owns 100% of NIOC. Request for Judicial Notice
2 [Dkt. 23] (“RJN”) Ex. 4 at p. 419; *see also* RJN Ex. 5 (U.S. Department of Treasury
3 press release noting that “NIOC . . . [is] part of the Government of Iran”). Under
4 Iranian law, NIOC owns all of Iran’s oil resources and transfers the proceeds from
5 its sales of oil to the Central Bank of Iran for use in financing the Iranian
6 government’s budget. RJN Ex. 4 at pp. 416-17; *see also id.*, RJN Ex. 5 at p. 2 (U.S.
7 Department of Treasury press release noting that “NIOC, overseen by the [Iranian]
8 Ministry of Petroleum, is responsible for the exploration, production, refining, and
9 export of oil and petroleum products in Iran”); Adesnik Decl. at ¶ 13.

10 As Mr. Adesnik explains in his uncontested declaration, because of the
11 sanctions that the U.S. has imposed related to Iran’s nuclear proliferation efforts
12 and terrorism, Iran engages in elaborate efforts to hide the provenance of its oil and
13 to sell that oil on the black market. Adesnik Decl. at ¶¶ 4-6. The oil aboard the
14 Suez Rajan was subject to precisely such sanctions-busting machinations. *Id.* at
15 ¶¶ 15-22. [REDACTED]

16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]²

21 On or about January 22, 2022, NIOC loaded the Smuggled Oil aboard the
22 Panamanian-flagged crude oil tanker Virgo at Iran’s Kharg Island Terminal, a
23 destination where only Iranian oil would be located. Adesnik Decl. at ¶¶ 13, 15;
24 Tr. at 91 (Oaktree representative Martin Graham saw satellite images showing that
25 the Virgo secured the oil it delivered to the Suez Rajan at Kharg Island in Iran);
26 Tr. at 91 (Empire Navigation did not dispute that the vessel Virgo was the ship that

27 _____
28 ² Citations to “Hearing Ex. __” refer to exhibits introduced into evidence at the Examination
Hearing, copies of which are submitted herewith in the accompanying Compendium.

1 transferred the Smuggled Oil onto the Suez Rajan). After the Virgo left Kharg
2 Island, NIOC moved the Smuggled Oil onto the Suez Rajan by means of a ship-to-
3 ship transfer. Adesnik Decl. at ¶¶ 7, 16-19; Tr. at 37, 90-91 (the Suez Rajan's
4 charterer Empire Navigation confirmed that there had been a ship-to-ship transfer to
5 load the oil on the Suez Rajan). Before that transfer took place, the Virgo and the
6 Suez Rajan turned off the transponders that signal their locations. Adesnik Decl. at
7 ¶ 18. That illegal maneuver, which NIOC commonly employs to hide its ownership
8 of oil it sells in violation of U.S. sanctions, leaves little doubt that the Smuggled Oil
9 aboard the Suez Rajan belongs to NIOC. Adesnik Decl. at ¶¶ 5-6, 15-22.

10 Satellite imagery further evidences NIOC's ownership of the Smuggled Oil.
11 *Id.* at ¶¶ 13, 15, 20. After the Virgo and the Suez Rajan turned off their
12 transponders, the satellite imagery shows that the two vessels remained side-by-
13 side, a maneuver consistent with the illicit ship-to-ship transfer Petitioners allege.
14 *Id.* at ¶¶ 16-18.

15 Moreover, since this ruse became public knowledge and the subject of a U.S.
16 government investigation, the Suez Rajan has remained idled in waters near the
17 Riau Archipelago of Indonesia, rather than proceeding to her intended destination
18 of China. RJN Ex. 12 (April 21, 2022, email by Brian P. Maloney, Esq., counsel
19 for Oaktree); Tr. at 95 (Suez Rajan has been adrift for 9 months with approximately
20 \$100 million in oil and no one has claimed ownership of that oil). If the Smuggled
21 Oil originated someplace other than Iran, it would not be occupying a tanker for
22 months-on-end during a period of high demand for oil resulting from the war in
23 Ukraine and the related sanctions upon Russian energy exports.

24 In the face of this powerful circumstantial evidence that the Smuggled Oil on
25 the Suez Rajan is Iranian, Mr. Graham testified that he does not "know" that the
26 Suez Rajan's cargo is Iranian oil but he does "have suspicions that it's Iranian oil."
27 Tr. at 97. Even after Empire Navigation provided purported proof that the
28 Smuggled Oil was not Iranian in origin, the belated nature of that "evidence"

1 caused Mr. Graham “suspicions about the veracity of those documents.” *Id.* at 37-
2 38. Mr. Graham conceded that Empire Navigation and the ultimate charterer of the
3 Suez Rajan for the voyage in question (Ocean Park) “both had the opportunity and
4 motivation to either forge these documents or to produce them through corrupt
5 means.” *Id.* at 38-39.

6 The Suez Rajan’s cargo is worth approximately \$100 million. Bonner Decl.
7 at ¶ 13. *See also* Tr. at 96 (Oaktree consultant Tobias Backer “said to [Mr.
8 Graham] there’s a hundred million dollars’ worth of oil on that ship”). That amount
9 constitutes but a small fraction of the billions of dollars Iran owes Petitioners.
10 Bonner Decl. at ¶¶ 4, 13.

11 **C. Oaktree and Its Control of the Suez Rajan**

12 Oaktree is an investment manager incorporated under Delaware law, with its
13 principal executive office in this District. RJD Ex. 7 at p. 1, RJD Ex. 11
14 [Declaration of Oaktree Managing Director Martin Graham (“Graham Decl.”)] at
15 ¶¶ 1, 7; Hearing Ex. 17 [Compendium Tab 8] (identifying four of the six members
16 of the “Fleetscape Team” as officers or employees of Oaktree). Public records
17 identify the registered owner of the Suez Rajan as Fleetscape Suez Rajan LLC.
18 RJD Ex. 1 at p. 1, and RJD Ex. 11 (Graham Decl. at ¶¶ 2, 13). Public documents
19 also identify Oaktree as the “Group Beneficial Owner” of the Suez Rajan. RJD
20 Ex. 1.

21 More importantly, as demonstrated below, evidence admitted at the
22 Examination Hearing demonstrates definitively that Oaktree, an entity
23 headquartered in Los Angeles, is the ultimate owner of the Suez Rajan through
24 various employee-less foreign shell companies. Moreover, under the Bareboat
25 Charter Agreement governing the vessel, Oaktree and its Los Angeles-based
26 personnel have the right and ability to re-take possession of the vessel and its cargo.

27 Oaktree owns the Suez Rajan through foreign shell company affiliates. Tr. at
28 12 (“we may own the vessel, but it is purely as collateral;” “an affiliate of Oaktree

1 Capital Management is the owner of the Suez Rajan”). Consistent with that
2 testimony, Mr. Graham acknowledged in an email that the Suez Rajan “belong[ed]
3 to an Oaktree fund.” Hearing Ex. 45 [Compendium Tab 14] at OCM09994 (Feb.
4 16, 2022 email).

5 At the hearing, Petitioners introduced an Oaktree chart summarizing the
6 entities in the ownership structure of the Suez Rajan. Hearing Ex. 6 [Compendium
7 Tab 4]. None of the Oaktree foreign shell corporation affiliates in that ownership
8 structure have any offices or employees, and each of them was created by Los
9 Angeles-based Oaktree employees. Tr. at 51-53. Moreover, Mr. Graham, testified
10 that: (1) he has no knowledge that there is anybody working in Oaktree’s Los
11 Angeles office who is employed by anyone else other than Oaktree (Tr. at 53); and
12 (2) Fleetscape Suez Rajan LLC “is controlled by a Delaware entity, Oaktree GP
13 Fund, LLC, and the only way you can get in contact with that entity is through the
14 Oaktree Office in Los Angeles, or through us in London” where Mr. Graham
15 works. Tr. at 63.

16 Mr. Graham also acknowledged that Oaktree personnel in Los Angeles have
17 overall responsibility for the investing activity of the fund that owns the Suez
18 Rajan. Tr. at 20-21; *see also* Tr. at 49-50 (the day-to-day management of the Fund
19 that ultimately owns the Suez Rajan is conducted by Oaktree personnel in Oaktree’s
20 Los Angeles office). Oaktree’s subsidiary, Oaktree Fund GP, I, LLC, and its
21 subsidiary provide the day-to-day direction for the Oaktree Maritime Fund that
22 owns the Suez Rajan. Tr. at 51. Oaktree Fund GP, I, LLC is located in Los
23 Angeles and when Mr. Graham wants to contact that entity he “contact[s]
24 individuals who work in the Oaktree office in Los Angeles.” *Id.*

25 The Fleetscape Capital entities in the ownership structure of the Suez Rajan
26 are also Oaktree affiliates that do not have independent management. Rather, they
27 are managed by a combination of Oaktree employees and Oaktree consultants. Tr.
28

1 at 58; Hearing Ex. 43 [Compendium Tab 12] at OCM09741; Hearing Ex. 6
2 [Compendium Tab 4].

3 Consistent with that structure, under the Bareboat Charter Agreement for the
4 Suez Rajan signed by Oaktree affiliate Fleetscape Suez Rajan, LLC, all notices to
5 Fleetscape are to be sent to Oaktree in Los Angeles. Tr. at 60; Hearing Ex. 3
6 [Compendium Tab 5] at 1496-1497. Similarly, pursuant to the sale agreement by
7 which Oaktree's shell-company affiliate Fleetscape Suez Rajan, LLC purchased the
8 Suez Rajan, all notices are to be sent to Oaktree in Los Angeles. Hearing Ex. 5
9 [Compendium Tab 3] at OCM01546; Tr. at 61-62. Moreover, Mr. Graham, a
10 managing Director of Oaktree who conceded that he answers to Oaktree senior
11 leadership in Los Angeles, signed the memorandum of agreement for the purchase
12 of the Suez Rajan as a representative of the buyer, Fleetscape Suez Rajan LLC.
13 Hearing Ex. 5 [Compendium Tab 3] at OCM01555; Tr. at 20-21, 27.

14 The manner in which Oaktree responded to the information that the Suez
15 Rajan was holding the Smuggled Oil confirms that the Los Angeles-based entity
16 controls the response to that sanctions violation and, thus, further evidences
17 Oaktree's control over the Suez Rajan. [REDACTED]

18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED] Oaktree also
23 immediately delivered instructions to Empire Navigation to refrain from delivering
24 the oil aboard the Suez Rajan to its Chinese destination, thus demonstrating
25 Oaktree's confidence in its ability to control the movements of the Suez Rajan. Tr.
26 39; Hearing Ex. 34 [Compendium Tab 10] at OCM04288 (the substance of
27 Oaktree's message to Empire Navigation was "You are required to instruct the
28

1 vessel to maintain its current position and discontinue any further voyage until the
2 matter is resolved”).

3 Moreover, Los Angeles-based Oaktree employees controlled any public
4 statements made in response to allegations that the Suez Rajan is laden with Iranian
5 oil. *See* Tr. at 70 (no public statement would be released on behalf of Fleetscape
6 Capital without approval from Oaktree’s corporate communications team in Los
7 Angeles); Tr. at 71 (Oaktree decided what would be said publicly about the Suez
8 Rajan and decided to attribute those statements to a spokesman for Fleetscape,
9 which had no employees); Hearing Ex. 37 [Compendium Tab 11] at 4728; Tr. at
10 78-81(two Oaktree lawyers in Los Angeles ultimately signed the letter to Empire
11 Navigation reserving all rights under the Suez Rajan Bareboat Charter Agreement
12 on behalf of Fleetscape Suez Rajan and the various Oaktree affiliate shell
13 companies in the vessel’s ownership chain). Indeed, Mr. Graham told Oaktree’s
14 public relations consultant Ms. Claire Keyte that, with respect to matters related to
15 the Suez Rajan, he (Mr. Graham) spoke “under [the LA Office of Oaktree
16 Capital’s] control.” Tr. at 26-27. Mr. Graham also acknowledged that Oaktree’s
17 Los Angeles office would be the “final determinant” about what was said publicly
18 about the USDHS’s allegations of Iranian Oil aboard the Suez Rajan. Tr. at 28-29;
19 Hearing Ex. 44.

20 The terms of the Bareboat Charter also make clear that Oaktree maintains the
21 power to reclaim the Suez Rajan from Empire Navigation and its affiliate, Suez
22 Rajan Limited. As Mr. Graham testified at the Examination Hearing, Suez Rajan,
23 Limited, an affiliate of Empire Navigation, chartered the Suez Rajan pursuant to the
24 Bareboat Charter. Tr. at 29-30; Hearing Ex. 3 [Compendium at Tab 2]. Mr.
25 Graham also acknowledged at the Examination Hearing that carrying the Smuggled
26 Oil aboard the Suez Rajan violates the Bareboat Charter. Tr. at 32. *See also*
27 Hearing Ex. 34 [Compendium at Tab 10] at OCM04288; Hearing Ex. 2
28

1 [Compendium at Tab 15] at OCM01331 (Oaktree's citation to relevant sanctions
2 provision of Bareboat Charter Agreement).

3 Moreover, the Bareboat Charter explicitly authorizes Oaktree's affiliate to
4 terminate the agreement and reclaim the Suez Rajan if Suez Rajan Limited permits
5 the vessel to transport Iranian oil. Tr. at 32; Hearing Ex. 3 [Compendium Tab 2] at
6 OCM01352 (defining the "Charter Period" as five years absent violations of,
7 among other terms, the lease's "Sanctions" provisions). Upon termination,
8 Oaktree's shell company affiliate, Fleetscape Suez Rajan LLC, which Oaktree
9 controls, would retake possession of the vessel. Hearing Ex. 3 at OCM01413-14,
10 Clause 44.2 (entitling Oaktree's subsidiary to terminate the Bareboat Charter
11 Agreement if the Suez Rajan is operated in violation of U.S. "Sanctions").

12 Moreover, although Oaktree denies that it has control over the Suez Rajan,
13 Mr. Graham conceded that Oaktree personnel in Los Angeles have the requisite
14 signing authority to terminate the Bareboat Charter and to execute the
15 documentation necessary to do so "without any input from [Mr. Graham]." Tr. at
16 23. Consistent with that testimony, Mr. Graham acknowledged that if Oaktree's
17 CEO decided to terminate the Bareboat Charter Agreement for the Suez Rajan,
18 there is not "anyone who is in a position to tell him that they're not going to follow
19 his directions." Tr. 23-24.

20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 As a result, no fair question exists regarding Oaktree's ability to control the
2 Suez Rajan. It appears, however, that Oaktree lacks the will to take the steps within
3 its power to reclaim the vessel. [REDACTED]

4 [REDACTED]
5 [REDACTED] Because the case law
6 authorizes the Court to order the steps necessary to facilitate Petitioners' ability to
7 collect their long-outstanding judgments, the Court should put an end to Oaktree's
8 profiteering and require it to terminate the Bareboat Charter.

9

10 **I. THE COURT HAS SUBJECT MATTER JURISDICTION**
11 **OVER THESE POST-JUDGMENT PROCEEDINGS**

12 Federal district courts have subject matter jurisdiction to conduct post-
13 judgment proceedings related to the enforcement of money judgments entered
14 pursuant to the FSIA's terrorism exception to foreign state immunity. *See*
15 *Peterson v. Islamic Republic of Iran* (9th Cir. 2010) 627 F.3d 1117, 1122-23.
16 Petitioners have registered their judgments in this District pursuant to 28 U.S.C.
17 § 1963. Bonner Decl. at ¶ 7. Accordingly, the Court may enforce those
18 judgments to the same extent as judgments the Court initially issued itself. *See*,
19 e.g., *Peterson*, 627 F.3d at 1123 ("When a final judgment from one district is
20 registered with another district court pursuant to § 1963, the registered judgment
21 must be treated like any other judgment entered by the registering court."); *Rubin*
22 *v. Islamic Republic of Iran* (D. Mass. Sept. 30, 2006) 2006 U.S. Dist. LEXIS
23 73383, at *1 ("This Court acquired jurisdiction over the present controversy [to
24 attach assets belonging to Iran] when the plaintiffs registered here the judgment
25 they had obtained against Iran in the United States District Court for the District of
26 Columbia.").

1 **II. FEDERAL RULE OF CIVIL PROCEDURE 69 PERMITS JUDGMENT CREDITORS**
2 **TO RELY ON FEDERAL LAW AND STATE (CALIFORNIA) LAW PROCEDURAL**
3 **MECHANISMS TO FACILITATE THEIR COLLECTION EFFORTS**

4 Under Fed. R. Civ. P. 69, in federal court, “[a] money judgment is enforced
5 by a writ of execution, unless the court directs otherwise.” Rule 69 further
6 dictates that “[t]he procedure on execution—and in proceedings supplementary to
7 and in aid of judgment or execution—must accord with the procedure of the state
8 where the court is located, but a federal statute governs to the extent it applies.”
9 Under Rule 69, Petitioners may therefore rely upon the full array of enforcement
10 mechanisms available under federal and California law to facilitate their ability to
11 use the Smuggled Oil to satisfy a portion of their Default Judgments. *See, e.g.*,
12 *Peacock v. Thomas* (1996) 516 U.S. 349, 356 (emphasizing that a federal court
13 has the “inherent power to enforce its judgments” and that it may exercise that
14 power in connection with “supplementary proceedings involving third parties to
15 assist in the protection and enforcement of federal judgments – including
16 attachment, mandamus, garnishment, and the prejudgment avoidance of fraudulent
17 conveyances”).

18 **III. THE COURT SHOULD EXERCISE ITS AMPLE STATUTORY AND EQUITABLE**
19 **POWERS TO FACILITATE PETITIONERS’ ABILITY TO EXECUTE THEIR**
20 **DEFAULT JUDGMENTS AGAINST THE SMUGGLED OIL**

21 **A. The Court May Exercise Its Full Array of Equitable
22 Powers in Connection with the Examination Hearing**

23 In conjunction with Cal. Civ. Pro. Code Section 708.120 examination
24 proceedings, California state and federal courts can employ a number of judicial
25 powers and procedural mechanisms to facilitate judgment creditors’ ability to
26 collect judgment debtor assets controlled by third parties. For example, “the court
27 or referee may order the person examined, be it the judgment debtor or a third
28 person, to deliver property or funds to a levying officer or directly to the judgment
 creditor.” *Imperial Bank v. Pim Elec. Inc.* (1955) 33 Cal. App. 4th 540, 547 (citing

1 Cal. Civ. Proc. Code § 708.205, Cal. Law Revision Comm. Comment). As
2 *Imperial Bank* explains, the court may also facilitate collection by, among other
3 steps, appointing a receiver or directing “that execution be issued to collect the sum
4 due.” *Id.* (also citing Cal. Civ. Proc. Code § 708.205, Cal. Law Revision Comm.
5 Comment); *see also, id.* at 550 (“A judgment creditor may also obtain a turnover
6 order in aid of execution.”) (quoting Alan M. Ahart, *Cal. Practice Guide:*
7 *Enforcing Judgments & Debts* 2 (The Rutter Group 1994), P 6:1338.1, p. 6G-16.1.);
8 Cal. Civ. Proc. Code § 708.620 (“The court may appoint a receiver to enforce the
9 judgment where the judgment creditor shows that, considering the interests of both
10 the judgment creditor and the judgment debtor, the appointment of a receiver is a
11 reasonable method to obtain the fair and orderly satisfaction of the judgment.”);
12 Cal. Civ. Proc. Code § 708.120, Legislative Committee Comment (“The court may
13 also determine in the examination proceedings that the property sought to be
14 reached may properly be applied to the satisfaction of the judgment through an
15 order in examination proceedings.”).

16 **B. TRIA and the FSIA Dictate that the Smuggled Oil
17 Enjoys No Immunity from Execution**

18 Under the FSIA assets of foreign sovereigns and their agencies and
19 instrumentalities located in the United States remain exempt from execution
20 *unless* a statutory exemption applies to those assets. *See* 28 U.S.C. § 1609
21 (“Subject to existing international agreements to which the United States is a party
22 at the time of enactment of this Act ... the property in the United States of a
23 foreign state shall be immune from attachment arrest and execution except as
24 provided in sections 1610 and 1611 of this chapter.”). However, the FSIA does
25 *not* immunize a foreign sovereign’s assets located *outside* the U.S.—including the
26 Smuggled Oil—from collection proceedings in the U.S.

27 In that regard, the U.S. Supreme Court held in *Republic of Arg. v. NML
28 Capital, Ltd.* (2014) 573 U.S. 134 that the “*comprehensive*” FSIA “*indisputably*

1 governs the determination of whether a foreign state is entitled to sovereign
2 immunity.”” *Id.* at 141 (emphasis in original) (quoting *Samantar v. Yousuf* (2010)
3 560 U.S. 305, 313). As a result, “any sort of immunity defense made by a foreign
4 sovereign in an American court must stand on the Act’s text. Or it must fall.” *Id.*
5 at 141-42. The *NML* Court further held that “[t]he text of [28 U.S.C. § 1609]
6 immunizes only foreign-state property ‘in the United States,’” and even that
7 immunity to execution is subject to various exceptions. *Id.* at 144 (emphasis in
8 original). Thus, *NML* forecloses any suggestion that the FSIA prevents Petitioners
9 from collecting the Smuggled Oil aboard the Suez Rajan, which is currently idled
10 in international waters off the coast of Indonesia.

11 Moreover, TRIA – upon which Petitioners rely – provides a comprehensive
12 exception to the FSIA’s default rule immunizing foreign sovereign’s assets “in the
13 United States.” TRIA provides:

14 Notwithstanding any other provision of law, and except as provided in
15 subsection (b), in every case in which a person has obtained a
16 judgment against a terrorist party on a claim based upon an act of
17 terrorism, or for which a terrorist party is not immune under section
18 1605A or 1605(a)(7) (as such section was in effect on January 27,
19 2008) of title 28, United States Code, the blocked assets of that
20 terrorist party (including the blocked assets of any agency or
21 instrumentality of that terrorist party) shall be subject to execution or
attachment in aid of execution in order to satisfy such judgment to the
extent of any compensatory damages for which such terrorist party has
been adjudged liable.

22 TRIA, § 201(a) (codified at 28 U.S.C. § 1610 (note)).³

23 ³ Most judgments against foreign sovereigns and their agencies and instrumentalities may only
24 be enforced after a court issues an order pursuant to 28 U.S.C. § 1610(c) finding that an
25 adequate amount of time has passed without the satisfaction of the judgment to allow
26 enforcement proceedings to commence. However, judgments enforced pursuant to TRIA—
27 which Congress adopted explicitly to facilitate the collection of judgments against state
28 sponsors of terrorism like Iran—are not subject to that requirement, which applies only to any
“attachment or execution referred to in subsections (a) and (b) of [§ 1610].” Congress did not
codify TRIA as part of § 1610(a) or (b). Rather, TRIA is a standalone provision codified in a
note to § 1610. *See, e.g., Stansell, supra*, 771 F.3d at 730 (§ 1610(c) is inapplicable to
collection efforts undertaken pursuant to TRIA); *but see Levin v. Bank of N.Y.* (S.D.N.Y.

1 As courts have recognized, “notwithstanding” provisions like the one TRIA
2 features eliminate all obstacles to statutes’ enforcement, whether statutory or
3 common law. *See, e.g., Cisneros v. Alpine Ridge Grp.* (1993) 508 U.S. 10, 18
4 (“[T]he Courts of Appeals generally have interpreted similar notwithstanding
5 language . . . to supersede all other laws, stating that [a] clearer statement is
6 difficult to imagine.”) (internal quotations and citation omitted). Thus,
7 impediments to collection extraneous to TRIA—whether they arise under the
8 FSIA or another provision of state or federal law—cannot prevent collection
9 where judgment creditors demonstrate that they satisfy all of TRIA’s
10 requirements. As explained at Point III.C below, Petitioners satisfy all of TRIA’s
11 requirements with respect to the Smuggled Oil because that contraband is “the
12 blocked asset of [Iran’s] . . . instrumentality” NIOC.

13 Moreover, the fact that Oaktree does not currently have possession of the
14 Suez Rajan poses no obstacle to the relief Petitioners seek. The New York Court
15 of Appeals’ decision in *Commonwealth of the N. Mariana Islands v. Canadian*
16 *Imperial Bank of Commerce* (N.Y. 2013) 990 N.E. 2d 114, is instructive. *N.*
17 *Mariana Islands* held that the New York courts lacked the power to order a parent
18 banking institution to turnover assets its foreign subsidiary held for the judgment
19 debtor. The court reasoned that, unlike California’s Section 708.120, the New
20 York law authorized a court to order turnover only where a third party had actual
21 possession or custody of the judgment debtor’s property. *Id.* at 117. Critically,
22 that ruling hinged on the specific language of the applicable New York collection
23 statute, which dictated that courts could compel turnover only when a third party

24
25 Jan. 28, 2011) 2011 U.S. Dist. LEXIS 8946, at *43-45 (in a proceeding seeking turnover of
26 Iranian assets pursuant to TRIA, writs of execution served without first obtaining a § 1610(c)
27 order were invalid). Thus, consistent with *Stansell*, the Court’s order denying Petitioners’ *ex*
28 *parte* application for a § 1610(c) order does not present any obstacle to enforcement of
Petitioners’ Default Judgments pursuant to TRIA. *See also* Dkt. 5-1 at p.5 (noting that
Petitioners’ request for a § 1610(c) order was made “out of an abundance of caution”).

1 itself was in ““possession or custody”” of the judgment debtor’s assets. *See id.*
2 (quoting N.Y. CPLR § 5225(b)).

3 The *N. Mariana Islands* Court emphasized that “[t]he plain language of
4 section 5225(b) refers only to ‘possession or custody,’ excluding any reference to
5 ‘control.’” *Id.* As a result, the court held that it could not order the parent entity
6 to compel its subsidiary to turnover the relevant assets because “the omission of
7 ‘control’ from section 5225(b)” demonstrated the legislature’s determination that
8 ““possession or custody’ requires actual possession.” *Id.* The court therefore
9 concluded that it could not order the parent to turnover the relevant assets, even if
10 the parent possessed the practical ability to control the actions of its subsidiary.
11 *Id.* at 119 (“Consequently, because ‘possession, custody or control’ has been
12 construed to encompass constructive possession, then, by contrast, legislative use
13 of the phrase ‘possession or custody’ contemplates actual possession.”).

14 In contrast to New York’s CPLR § 5225(b), California’s legislature has
15 authorized courts to conduct examination proceedings when “a third person has
16 possession **or control** of property in which the judgment debtor has an interest.”
17 Cal. Civ. Proc. Code § 708.120(a) (emphasis added). The Code of Civil
18 Procedure further empowers a court to order relief designed to facilitate the
19 collection of judgments “at the conclusion of” an examination hearing where the
20 court determines that a judgment debtor’s property is “in the possession **or under**
21 **the control** of” a “third person.” Cal. Civ. Proc. Code § 708.205(a) (emphasis
22 added). Thus, the wording of the California statute dictates that—in contrast to
23 New York law—a third party’s control over the movement of an asset suffices to
24 permit a California court to order steps designed to facilitate collection of that
25 property.

26 Cases arising in other contexts bolster the conclusion that, to demonstrate
27 Oaktree’s “control” over the Suez Rajan and its cargo, Petitioners need only
28 demonstrate that Oaktree has the practical ability to direct the actions of its

1 subsidiaries. For example, in *United States v. Int'l Union of Petrol. & Indus.*
2 *Workers* (9th Cir. 1989) 870 F.2d 1450, the court addressed the scope of Fed. R.
3 Civ. P. 34(a), which permits discovery of documents in the ““possession, custody
4 or control”” of the recipient of a document request or subpoena. *Id.* at 1452
5 (quoting Fed. R. Civ. P. 34(a) (emphasis added)). The court concluded that
6 Rule 34(a)’s “control” language dictates that “[a] corporation must produce
7 documents possessed by a subsidiary that the parent corporation owns or wholly
8 controls.” *Id.*

9 Similarly, in *Helmerich & Payne Int'l Drilling Co. v. Bolivarian Republic*
10 *of Venez.* (D.D.C. 2016) 185 F. Supp. 3d 233, the court addressed the plaintiffs’
11 entitlement to discovery relevant to whether oil rigs expropriated pursuant to
12 Venezuelan statutes were ““owned or operated by an agency or instrumentality
13 of”” Venezuela. *Id.* at 237 (quoting 28 U.S.C. § 1605(a)(3)). The court held that
14 the plaintiffs could demonstrate that Venezuelan agencies “owned or operated” the
15 Plaintiffs’ rigs by proving the agencies’ “power, influence, or practical control
16 over the rigs as manifested through their control of their respective wholly owned
17 subsidiaries.” *Id.* at 244.

18 **C. At the Examination Hearing Petitioners Demonstrated
19 that They Satisfy All of TRIA’s Requirements for Executing
Against the Proceeds of the Smuggled Oil**

20 **1. *The Elements Petitioners Must Prove to Show Their
21 Entitlement to Collect the Smuggled Oil Under TRIA***

22 In *Weininger v. Castro* (S.D.N.Y. 2006) 462 F. Supp. 2d 457, 479, the court
23 held that judgment creditors must prove the following elements to execute against
24 sovereign assets pursuant to TRIA:

25 (1) [they have] obtained a judgment against a terrorist party;
26 (2) the judgment is either (a) for a claim based on an act of terrorism,
27 or (b) for a claim for which a terrorist party is not immune under 28
28 U.S.C. § 1605A (or former 28 U.S.C. § 1605(a)(7));

(3) the assets are “blocked assets” within the meaning of TRIA; and

(4) the execution is sought only to the extent of any compensatory damages [; and

(5)] the blocked assets ... are those of either the “terrorist party” or “any agency or instrumentality of that terrorist party,” even though the judgment itself need be only against the terrorist party.

Through the testimony and documentary evidence introduced at the Examination Hearing along with the evidence previously submitted to this Court, Petitioners have established all those elements, most of which are incontestable.

2. Petitioners Hold Judgments Against Iran, a Terrorist Party

TRIA defines the term “terrorist party” to include “a foreign state designated as a state sponsor of terrorism under section 6(j) of the Export Administration Act of 1979 ([50 U.S.C. § 4604]) or section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371).” TRIA § 201(d)(4). Petitioners hold judgments against Iran, which has been designated as a state sponsor of terrorism pursuant to § 6(j) of the Export Administration Act of 1979 since January 19, 1984. *See Bennett v. Islamic Republic of Iran* (9th Cir. 2015) 817 F.3d 1131, 1137; RJN Ex. 10.

3. Petitioners' Judgments Arise from Claims for Which Iran Has No Immunity from Liability

Petitioners secured terrorism-related judgments under 28 U.S.C. § 1605A or its predecessor, § 1605(a)(7). Bonner Decl. at ¶ 5. Those statutes provide exceptions to the default rule that sovereigns are immune from liability in U.S. courts. *See* 28 U.S.C. § 1605A; 28 U.S.C. § 1605(a)(7) (repealed and replaced by § 1605A); Bonner Decl. at ¶¶ 5-6. TRIA applies equally with respect to both statutes. *See* TRIA § 201(a).

4. Petitioners' Uncollected Compensatory Damages Far Exceed the Value of the Smuggled Oil

As noted above, Petitioners hold billions of dollars of uncollected compensatory damages judgments against Iran. *See* Bonner Decl. at ¶ 4. The value of the Suez Rajan’s cargo is far smaller—roughly \$100 million at the market prices prevailing on May 13, 2022. *Id.* at ¶¶ 12-13; RJD Exs. 2, 3, 15 and 16.

5. *The Smuggled Oil is a Blocked Asset of NIOC, Which Qualifies as an Agency or Instrumentality of Iran Under TRIA*

The Smuggled Oil also qualifies as a “blocked asset of” NIOC that is subject to execution under TRIA because NIOC is an “agency or instrumentality” of Iran. *See* TRIA § 201(a). The FSIA defines an “agency or instrumentality of a foreign state” to include:

any entity (1) which is a separate legal person, corporate or otherwise, and (2) ... a majority of whose shares or other ownership interest is owned by [the] foreign state or a political subdivision thereof, and (3) which is neither a citizen of a State of the United States ... nor created under the laws of any third country.

28 U.S.C. § 1603(b). The Iranian government owns 100% of NIOC. *See* RJD Ex. 4 at 419 and RJD Ex. 6. Thus, NIOC is unquestionably an agency or instrumentality of Iran. *See, e.g., Estate of Hardwick v. Islamic Republic of Iran* (D.D.C. Oct. 1, 2021) 2021 U.S. Dist. LEXIS 252934, at *26 (“NIOC constitutes an ‘agency or instrumentality’ of Iran.”).

TRIA defines the term “blocked asset” to mean “any asset seized or frozen by the United States under section 5(b) of the Trading with the Enemy Act ([50 U.S.C. § 4305(b)]) or under sections 202 and 203 of the International Emergency Economic Powers Act (50 U.S.C. 1701; 1702) (“IEEPA”).” TRIA § 201(d)(2)(A). Effective February 6, 2012, President Obama exercised powers he possessed under IEEPA to block “[a]ll property and interests in property of the Government of Iran … that are in the United States, that hereafter come within the

1 United States, or that are or hereafter come within the possession or control of any
2 United States person....” RJN Ex. 9 (Executive Order 13599—*Blocking Property*
3 *of the Government of Iran and Iranian Financial Institutions*) at §§ 1(a) and 7(d)
4 (“EO-13599”).

5 EO-13599 defines the “Government of Iran” to include “any political
6 subdivision, agency, or instrumentality thereof.” EO-13599 at § 7(d). Thus, if a
7 “United States person” has “control” over property that belongs to NIOC—such as
8 the Smuggled Oil—TRIA subjects that property to execution.

9 As demonstrated above (*see* pp 6-8), Petitioners have already demonstrated
10 by a preponderance of the evidence that it is more likely than not that the
11 Smuggled Oil aboard the Suez Rajan belongs to NIOC and thus constitutes a
12 “blocked asset” of Iran.⁴ Moreover, for purposes of EO-13599, a United States
13 person includes any “entity organized under the laws of the United States or any
14 jurisdiction within the United States.” EO-13599 at § 7(c) (RJN Ex. 9).
15 Oaktree—which is organized under Delaware law and headquartered in this
16 District (RJN Ex. 7)—undeniably qualifies as a “United States person.”

17 Moreover, Oaktree “controls” the Smuggled Oil because it controls the
18 Suez Rajan, which currently houses that cargo. Petitioners have demonstrated that
19 Oaktree is the ultimate owner of the Suez Rajan through various foreign shell
20 companies; and under the Bareboat Charter Agreement governing the vessel,
21 Oaktree has the right and ability to re-take possession of the vessel and its cargo.
22 *See supra* at pp. 8-13.

23 Oaktree’s ability to control the Suez Rajan is reinforced by the fact that,
24 since Oaktree’s connection to the vessel became public, the tanker has not
25 proceeded to its intended destination in China. *See* p. 7, *supra*; Tr. at 95 (Suez
26 Rajan has been adrift for 9 months with approximately \$100 million in oil and no

27 ⁴ If the Court has any reservations about making such a finding, Petitioners request further
28 discovery and a hearing on that matter. As Petitioners note above, the Court limited the
Examination Hearing solely to questions concerning Oaktree’s control of the Suez Rajan.

1 one has claimed ownership of that oil); RJN Ex. 12. If an entity lacking
2 connection to the U.S. actually controlled the vessel, it would have delivered its
3 illicit cargo to China months ago.

4 Thus, the Smuggled Oil aboard the Suez Rajan is the property of an
5 instrumentality of Iran, which is a U.S. government-designated state sponsor of
6 terrorism. Moreover, Oaktree—a “United States person”—controls that oil by
7 means of the control it exerts over the Suez Rajan. Petitioners have therefore
8 demonstrated that—pursuant to TRIA § 201(a)—the Smuggled Oil aboard the
9 Suez Rajan is subject to execution to satisfy Petitioners’ judgments.

10 **D. The Presence of the Smuggled Oil in International
11 Waters Does Not Prevent the Court from Ordering
12 Oaktree to Take the Steps Necessary to Facilitate
13 Petitioners’ Ability to Execute Against Those Assets**

14 While, as the Court observed in its April 8, 2022 Order [Dkt. 12], the
15 Smuggled Oil itself currently is outside the Court’s jurisdiction, the Court
16 maintains ample power to order Oaktree—a party subject to the Court’s
17 jurisdiction—to take the steps necessary to facilitate Petitioners’ ability to execute
18 against those assets. While courts often enforce judgments by exercising *in rem*
19 powers over property, they can also facilitate collection by directing the actions of
20 entities subject to the courts’ *in personam* jurisdiction. *See, e.g., Taylor v. Taylor*
21 (1923) 192 Cal. 71, 76 (“By means of its power over the person of the parties
22 before it, a court of equity may in proper cases compel them to act in relation to
23 property not within the jurisdiction, but its decrees do not operate directly upon
24 the property nor affect the title. They are only made effectual through the
25 coercion of the parties, by directing some action on their part, such as the
26 execution of conveyances or the cancellation of instruments.”); *accord, e.g.,* Alan
27 M. Ahart, *Cal. Practice Guide: Enforcing Judgments & Debts*, Ch. 6J-3 (June
28 2021 Update) (“Ahart Practice Guide”) (“However, so long as it has personal
jurisdiction over the judgment debtor, a California court may order the judgment

1 debtor to apply out-of-state property to satisfy a California judgment.”); *see also*,
2 *e.g.*, *Brown v. Brown* (1971) 22 Cal. App. 3d 82, 84 (“Every court has power to
3 compel obedience to its judgments and orders ..., and a court of equity retains
4 inherent jurisdiction to oversee and enforce execution of its decrees.”).

5 The power to facilitate the collection of out-of-jurisdiction property by
6 issuing orders to entities subject to courts’ personal jurisdiction extends to
7 garnishees and other third parties that possess judgment debtors’ property. *See*,
8 *e.g.*, Ahart Practice Guide at 6:1849.4 (“The examinee may be ordered to deliver
9 out-of-state nonexempt property or funds directly to the judgment creditor, to the
10 levying officer or to a receiver (if one has been appointed.”). The New York
11 Court of Appeals’ decision in *Koehler v. Bank of Bermuda Ltd.*, (N.Y. 2009) 883
12 N.Y.S.2d 763 illustrates this principle. There, the court ordered a bank garnishee
13 to turn over to a judgment creditor stock certificates belonging to the judgment
14 debtor that the bank was holding in Bermuda. *See id.* at 769 (“In short, the
15 principle that a New York court may issue a judgment ordering the turnover of
16 out-of-state assets is not limited to judgment debtors, but applies equally to
17 garnishees.”); *accord, e.g.*, *JW Oilfield Equip., LLC v. Commerzbank AG*
18 (S.D.N.Y. 2011) 764 F. Supp. 2d 587, 591-93 (court may order German bank over
19 which it has personal jurisdiction “to turn over funds up to the amount of the
20 judgment, regardless of whether those accounts are held in Germany or New
21 York”).⁵ In various contexts, the California courts have applied the same
22 principle. *See, e.g.*, *Glob. Money Mgmt. v. McDonnold* (S.D. Cal. Oct. 15, 2009)
23 2009 U.S. Dist. LEXIS 96067, at *7 (“Additionally, the Court may require a

24
25 ⁵ *Accord, e.g., Aequitas Enters., LLC v. Interstate Inv. Grp., LLC* (Utah 2011) 267 P.3d 923,
26 930 (where court has personal jurisdiction over defendant, it can order the defendant to take
27 actions with respect to property outside of the court’s jurisdiction to protect the plaintiff’s
28 interests); *Groza-Vance v. Vance* (Ohio Ct. App. 2005) 834 N.E.2d 15, 24 (a court has
jurisdiction to enter an order “against the persons over whom it has personal jurisdiction, which
indirectly affects title to property”).

1 judgment debtor subject to personal jurisdiction of the Court to assign his rights to
2 payment to a judgment creditor, even if the assignable property is located outside
3 of California.”); *UMG Recordings, Inc. v. BCD Music Grp., Inc.* (C.D. Cal. Jul. 9,
4 2009) 2009 U.S. Dist. LEXIS 97017, at *12-13 (“Because there is no dispute that
5 the Court has jurisdiction over BCD in the present matter, the Court thus has ‘the
6 power to indirectly affect out-of-state property by means of a decree, based on
7 personal jurisdiction over the parties, which determines the parties’ personal rights
8 or equities in that property.’ … Accordingly, the Court may properly order BCD
9 to assign its rights to payment from out-of-state third parties.”) (citation omitted).

10 Moreover, before TRIA’s enactment in 2002, the United States had
11 repeatedly asserted its authority to block assets of foreign sovereigns located
12 outside the United States that were “within the possession **or control** of United
13 States persons,” including assets within the possession or control of “foreign
14 branches” of U.S. corporations or under the control of “any [individual or entity]
15 in the United States.” *See, e.g.*, Executive Order 13224, 66 Fed. Reg. 49079
16 (Sept. 25, 2001) at §§ 1, 3(a) and (c) (emphasis added).⁶ Accordingly, when
17 Congress authorized execution against assets blocked “**by** the United States” in
18 TRIA, it demonstrated the intent to permit execution against all assets the
19 government could block, including those located outside the United States but in
20 the possession or control of a United States person. *See, e.g.*, *Goodyear Atomic*
21 *Corp. v. Miller* (1988) 486 U.S. 174, 184-85 (“We generally presume that
22 Congress is knowledgeable about existing law pertinent to the legislation it
23 enacts.”); *see also, e.g.*, *Levin v. Bank of N.Y.* (S.D.N.Y. Oct. 3, 2019) 2019 U.S.
24 Dist. LEXIS 237101, at *42 (TRIA “establishes a separate exception to execution
25 immunity” that “does not impose a requirement that the property in question be ‘in

26
27 ⁶ *See also* 31 C.F.R. § 501.603(a)(2) (imposing primary responsibility for reporting blocked
28 assets to OFAC on, *inter alia*, a “person exercising control over property located outside the
United States”) (promulgated in 1997, 62 FED. REG. 45098).

1 the United States’’’). Thus, the Court may order Oaktree—a third party
2 undeniably subject to the Court’s jurisdiction—to undertake various actions with
3 respect to the Suez Rajan and its smuggled cargo to facilitate Petitioners’ ability to
4 collect that asset. *See, e.g., Koehler, supra*, 883 N.Y.S.2d at 769; *Miller v.*
5 *Doniger* (N.Y. App. Div. 2006) 814 N.Y.S.2d 141, 141 (affirming order requiring
6 judgment debtor to turn over specified out-of-state bank accounts to the New York
7 sheriff to facilitate collection efforts). Consistent with the foregoing authority,
8 here Petitioners seek an order compelling Oaktree to exercise its right to terminate
9 the Bareboat Charter with Empire Navigation, retake possession of the Suez Rajan
10 and its Iranian oil cargo and deliver that cargo to this District where Petitioners
11 may execute against it.

12 Mr. Graham offered inadmissible hearsay testimony at the hearing [REDACTED]

13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED] *see e.g., Branch v Umphenour*

17 (E.D. Cal. Jan. 18, 2017) 2017 US Dist LEXIS 7032, at *10 (out-of-
18 court statements offered for the truth of the matter asserted are
19 inadmissible hearsay); Fed. R. Evid. 801(c) (hearsay); *see also Ramirez v*
20 *Manpower, Inc.* (N.D. Cal. July 10, 2014) 2014 US Dist LEXIS 94362, at *15-17
21 (plaintiffs’ attorney’s declaration explaining plaintiff’s failure to act is
22 inadmissible because attorney did not lay a foundation for any personal
23 knowledge as to plaintiffs’ state of mind); Fed. R. Evid. 602 (lack of foundation).

24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1
2
3

4 Mr. Graham also testified that “as things stand today, we have felt that our
5 legal grounds to serve such a notice of termination [of the Bareboat Charter
6 Agreement] are not fully made out, and we are not certain that they would stand
7 up in a court of law.... [T]here’s very good arguments, but it’s far from
8 completely proven.” Tr. at 106-107. According to Mr. Graham, *if* Empire
9 Navigation were to dispute termination, the matter would by agreement be
10 litigated before the High Court in England and could take two years to resolve.
11 Tr. 107. Mr. Graham’s speculation of a possible termination dispute and a
12 possible two-year timeframe to resolve that dispute is unsupported by any
13 admissible evidence. [REDACTED]

14
15
16

17 According to Mr. Graham, Oaktree
18 “would want to take action quickly” to reclaim the vessel because it is only a six-
19 day sail from the Suez Rajan’s current location to its original destination in China.
Tr. at 108-109.

20 Mr. Graham’s speculation regarding the purported risk associated with
21 prevailing in an action related to Empire Navigation’s violation of the Bareboat
22 Charter Agreement lacks credibility. Everyone, including Oaktree, knows full
23 well that the Smuggled Oil is of Iranian origin. Otherwise, some entity that is not
24 subject to U.S. sanctions would have stepped forward long ago to claim its \$100
25 million asset. The Bareboat Charter Agreement contains explicit terms
26 authorizing termination if Empire Navigation permits the Suez Rajan to be used in
27 a manner that violates OFAC sanction regulations. *See* p. 12, *supra*. [REDACTED]

28

1

2

3 Moreover, Oaktree's preferences should play no role in deciding the
4 appropriate outcome of this proceeding. Oaktree is no innocent party. For nine
5 months, it has been collecting lucre related to Iran's efforts to evade U.S.
6 sanctions and Petitioners' long-outstanding judgments. Petitioners, who include
7 the representatives of U.S. peacekeepers and teenagers murdered by Iran, are the
8 innocent parties here. The Court should therefore exercise its substantial powers
9 to order the relief Petitioners seek so that they may obtain some justice for Iran's
10 callous, decades-long sponsorship of terrorism.

11

12

Moreover, if the U.S. government wishes to prevent the relief Petitioners
seek, it can intervene in this action to advance its position. [REDACTED]

13

14

15

16

CONCLUSION

17

18

19

20

21

22

23

24

25

26

27

28

1 Dated: December 19, 2022

Respectfully submitted,
Douglas J. Rovens
ROVENS LAMB LLP

4 James P. Bonner
5 Patrick L. Rocco
6 Susan M. Davies
FLEISCHMAN BONNER & ROCCO LLP

7 By: /s/ James P. Bonner
8 Attorneys for Petitioners
9 Emma Jean Anderson, et al.

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
ROVENS LAMB LLP
TRIAL LAWYERS